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RESOLUTION 2020-61

**A RESOLUTION OF THE VILLAGE COMMISSION OF THE
VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE
APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE
EMPLOYMENT AGREEMENT BETWEEN THE VILLAGE OF
BISCAYNE PARK AND MARIO DIAZ; APPOINTING MARIO DIAZ
AS VILLAGE MANAGER OF THE VILLAGE OF BISCAYNE
PARK; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, after the Village Commission conducted a search to fill the position of Village Manager, and the Commission unanimously selected Mario Diaz to be the next Village Manager; and

WHEREAS, Mario Diaz is willing and qualified to perform the duties and responsibilities of the position of Village Manager and the Commission has found it in the best interests of its citizens to appoint Mr. Diaz as Village Manager of the Village of Biscayne Park, Florida; and

WHEREAS, an Employment Agreement was negotiated between Mario Diaz and the Village Attorney, after receiving individual input and agreement from the Commission as to the essential terms of the contract; and

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, that

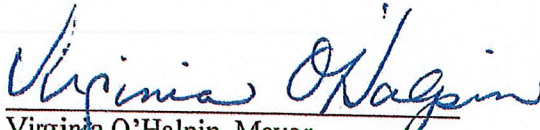
Section 1. The forgoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption.

Section 2. The appropriate Village officials are hereby authorized to execute the Employment Agreement between the Village of Biscayne Park and Mario Diaz, appointing Mario Diaz as the Village Manager of the Village of Biscayne Park, Florida, which Agreement is attached hereto and incorporated herein as Exhibit "1".

Section 3. This Resolution shall be effective upon adoption.

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3 PASSED AND ADOPTED this 17th day of November, 2020.
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6 The foregoing resolution upon being
7 put to a vote, the vote was as follows:
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11 Virginia O'Halpin, Mayor
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13 Attest:

Mayor O'Halpin: Yes
Vice Mayor Kennedy: Yes
Commissioner Gonzalez: Yes
Commissioner Hamelburg: Yes
Commissioner Samaria: Yes

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17 Roseann Prado, Village Clerk
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21 Approved as to form:

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24 Edward A. Dion, Village Attorney
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EMPLOYMENT AGREEMENT

This is an agreement entered into this 1st day of December, 2020 between the Village of Biscayne Park and Mario Diaz to provide for the employment of Mario Diaz as Village Manager of the Village of Biscayne Park, Florida, and to set forth the terms and conditions of his employment and the mutual obligations, rights and duties of each party.

Now, therefore, in consideration of the mutual promises as set forth in this Agreement, the Village of Biscayne Park, Florida (the "Village") and Mario Diaz ("Village Manager") agree as follows:

Section 1. Duties

A. The Village Commission employs, Mario Diaz, as the Village Manager of the Village of Biscayne Park, Florida to perform the functions and duties as specified in Section 3.01 the Village Charter, and to perform such other legally permissible and proper duties as required by the Village Commission from time to time.

B. The Village Manager shall perform the duties of Village Manager of the Village in accordance with the terms, conditions and provisions contained in this Agreement and the Charter in a professional and respectable fashion required of village managers generally and as required by the standards of the Code of Ethics of the International City/County Management Association. The Village Manager recognizes that the position of Village Manager is not and cannot be an hourly type employment and agrees to devote an amount of time and energy reasonably necessary for the Village Manager to fully perform the duties required under this Agreement. Thus, the Village Manager shall spend sufficient hours at the Village to perform the Village Manager's duties and carry out his responsibilities.

Section 2. Term of Agreement

A. The term of this Agreement shall commence on December 1, 2020 ("Effective Date"), for an indefinite term, unless otherwise terminated, as set forth below. This Agreement shall remain in full force and effect until terminated by the Village Commission or the resignation of Village Manager pursuant to Sections 7 and 8 below. The Village Manager shall serve at the pleasure of the Village Commission and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Commission to terminate the services of the Village Manager at any time, subject only to the provisions set forth in Section 7 of this Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Manager to resign at any time from the position of Village Manager, subject only to the provisions set forth in Section 8 of this Agreement.

Section 3. Exclusive Employment and Outside Consulting/Teaching

The Village Manager agrees to remain in the exclusive employment of the Village. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Village and the community, the Village Manager may elect to accept limited teaching,

consulting or other business opportunities with prior Village Commission approval. Any outside consulting or teaching arrangements shall not commence before the completion of the probationary period or interfere with the Village Manager's performance of his duties hereunder or constitute a conflict of interest with his responsibilities under this Agreement. The Village Commission may restrict or revoke approval of any outside employment when it deems necessary.

Section 4. Effective Date

This Agreement shall be effective December 1, 2020.

Section 5. Salary

The Village agrees to pay the Village Manager for his services under this Agreement an annual base salary of \$95,000.00, payable in installments at the same time as other Village employees are paid. This salary, and any other benefits provided in this Agreement, is subject to all legally required deductions.

Section 6. Evaluations/Probation Period

A. The Village Manager shall serve a six (6) month probationary period, commencing on the Effective Date of this Agreement.

B. Within thirty (30) days of the expiration of the probationary period, the Village Commission shall evaluate the performance of the Village Manager. Thereafter, the Village Commission shall evaluate the Village Manager on or before October 1st of each year. The evaluation shall be in a form the Village Commission deems appropriate based on criteria developed by the Village Commission in consultation with the Village Manager. The Village Manager will place on the agenda prior to October 1st of each year an item addressing his evaluation. The Village Commission shall determine the amount of any merit increase prior to the end of each fiscal year.

C. At the time of the scheduled evaluations, the Village Commission will consider any potential increases in the Village Manager's salary, benefits and allowances, based on performance.

Section 7. Termination by the Village and Severance Pay

A. In the event the Village Commission wishes to terminate the Village Manager, it shall do so in accordance with Section 3.03 of the Charter and the provisions of this Agreement.

B. Should the Village Commission terminate the services of the Village Manager "without cause," the Village Manager shall receive a severance payment in accordance with this Agreement.

C. The Village Manager shall not be entitled to severance during the probationary period. After completion of the probationary period, the Village Manager shall be entitled to severance pay equal to eight (8) weeks. For each year thereafter, the Village Manager shall be

entitled to four (4) additional weeks per year of service, with a cap of sixteen (16) weeks total severance, consistent with state law. The severance shall be paid in two (2) equal payments: the first upon separation from the Village, the second within thirty (30) days thereafter. Severance pay shall not be construed as compensation for services performed and severance payment shall not include automobile, earned and accrued annual, sick, compensatory, or administrative leave, or other similar benefits. Said payment of severance benefits made under this paragraph shall constitute full and complete payment and satisfaction of any claim the Village Manager may have against the Village arising under, or related to this Agreement or otherwise.

D. In the event the Village Manager is terminated for just cause, such termination will take effect immediately and the Village shall have no obligation to pay the amounts outlined in this Agreement except for any accrued and unpaid salary and benefits earned, consistent with Village policies, including leave policies, all earned paid holidays and other time noted in Section 13 of this Agreement. For the purposes of this Agreement, just cause is defined and limited to mean (1) breach of any material term or condition of this Agreement after ten (10) days' written notice and an opportunity to cure (opportunity to cure not required if incurable offense); (2) misconduct in office such as an act of fraud or dishonesty; (3) misconduct as defined in Florida Statute, Section 443.036(29) in which case, by statute, such payment would be prohibited; (4) gross insubordination; (5) willful neglect of duty; (6) a knowing or intentional violation of the International City/County Management Association, Florida or Miami-Dade County conflict of interest and code of ethics laws and Village Charter; (7) moral turpitude; or, (8) conviction of any criminal act (except for minor traffic infractions).

E. This Agreement is a continuing contract, which automatically renews annually unless expressly terminated by either party. If the Agreement expires without being continued, severance consistent with this Section will be provided.

Section 8. Termination by the Village Manager

The Village Manager may terminate this Agreement at any time by delivering to the Mayor and members of the Village Commission a written notice at least forty-five (45) days prior to the effective date of his resignation, unless the parties otherwise agree in writing. If the Village Manager voluntarily resigns pursuant to this Section, the Village shall pay to the Village Manager all accrued compensation due to Village Manager up to his final day of employment. The Village shall have no further financial obligation to the Village Manager pursuant to this Agreement. This subsection shall not prevent the Village Manager from collecting any money earned as a result of participation in the Village's defined retirement program, if any.

Section 9. Automobile Allowance and Communications Equipment

A. The Village Manager is required to be on call for twenty four (24) hours a day and therefore, the Village shall provide a four hundred dollar (\$400.00) per month vehicle allowance for use of his private automobile. The amount may be increased from time to time upon approval by the Village Commission. The Village agrees to reimburse Village Manager for mileage for travel that the Commission determines is extensive and out of the ordinary, such as seminars outside the South Florida area with prior approval of the Village Commission.

B. The Village Manager shall be provided with a cell phone and associated service plan.

Section 10. Dues and Subscriptions

The Village Manager agrees to maintain his membership with the International City/County Management Association, Miami-Dade City County Management Association and the Florida City/County Management Association. The Village agrees to pay Village Manager's professional dues for membership in the International City/County Management Association, Miami-Dade City County Management Association and the Florida City/County Management Association. The Village shall not be obligated to pay other dues and subscriptions on behalf of Village Manager, including necessary continuing education unit credits, unless approved in the Village's annual budget (on a line item basis) or as authorized separately by the Village Commission.

Section 11. Professional Development

A. The Village agrees to pay for the Village Manager's travel and attendance at seminars and conferences requested by the Manager and approved by the Commission consistent with the Village budget or as authorized separately by the Village Commission.

B. The Village recognizes that certain expenses of a non-personal nature but job-related nature are incurred by the Village Manager, and agrees to reimburse or to pay said general expenses, including local expenses for parking, transportation, membership in organizations contributing to a member's ability to fulfill leadership roles and communication expenses. The Commission's authorization to disburse such monies shall be upon the furnishing of receipts, statements or personal affidavits.

Section 12. Community Involvement

The Village recognizes the desirability of representation in and before local civic and other organizations, and encourages the Village Manager to participate in these organizations to foster a continuing awareness of the Village's activities as well as the community's attitudes and ideas.

Section 13. Time Off

A. The Village Manager will be entitled to the same paid holidays as all other full-time employees of the Village.

B. The Village Manager shall be entitled to leave consistent with Section 12 of the Village's Personnel Rules and Regulations, as amended from time to time. Both the Village and the Village Manager recognize a need to amend Section 12 and the Village Manager will address that issue before the next fiscal year.

C. Compensation Time. In recognition of the fact that the Village Manager is expected and will be regularly working in excess of forty (40) hour work weeks, the Village

Manager shall receive, on October 1st of each year, forty (40) hours in compensatory time. This time must be used during the fiscal year that he receives the compensatory time, or such time will expire. In addition, this time will not be paid out upon separation, whether by resignation or termination.

Section 14. Health and Dental Insurance

The Village Manager shall be provided the same health insurance coverage as provided to all other non-union full-time employees of the Village, in accordance with the Village's Personnel Rules and Regulations. The Village Manager agrees to be responsible for any additional insurance (i.e., dental and vision).

Section 15. Disability

Subsequent to the expiration of all benefits available to the Village Manager pursuant to the Family and Medical Leave Act, if the Village Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, medical incapacity or health for twenty (20) working days over a thirty (30) working day period, the Village shall have the option of terminating this Agreement, subject to the severance pay requirements of this Agreement. The severance owed to the Village Manager pursuant to this Agreement shall be reduced by all disability benefits the Village Manager receives from disability insurance.

Section 16. Retirement

The Village shall enter the Village Manager in the Florida Retirement System at the compulsory Senior Management Level rate and agrees to contribute all applicable employer mandated payments into such system on behalf of the Village Manager. The employee mandated payments shall be automatically deducted from the Village Manager's paycheck by the Village.

Section 17. Life Insurance

The Village shall provide a term life insurance policy to the Manager in the amount equal to one hundred percent (100%) of one (1) year's salary, including all increases in the base salary during the life of this Agreement. The Village Manager shall designate the beneficiary of this policy.

Section 18. Other Customary Benefits

The Village shall afford the Village Manager the right to participate in any other benefits or working conditions as provided for the administrative and management employees of the Village pursuant to the Village's Personnel Rules and Regulations, as amended from time to time.

Section 19. Indemnification

To the extent permitted by law and as limited by Section 768.28, Florida Statutes, the Village shall defend, hold harmless and indemnify the Village Manager against any tort, (not

including intentional torts), professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in connection with the performance of the Village Manager duties so long as the Village Manager is acting within the scope of his employment. The Village shall present any and all claims, demands or other legal actions to its insurance carrier.

Section 20. Bonding

The Village agrees to bear the full cost of any fidelity or other bonds as may be required pursuant to the Village Charter.

Section 21. Code of Ethics

Inasmuch as the Village Manager will be an active, full member of the International City/County Management Association (ICMA), the "Code of Ethics" promulgated by ICMA is incorporated herein and by this reference made a part hereof.

Said "Code of Ethics" shall furnish principles to govern the Village Manager's conduct and actions as Village Manager of the Village.

Section 22. Days

Other than as specified in Section 13, any reference to "day" in this Agreement shall mean calendar day.

Section 23. Other Terms and Conditions

A. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of the Village Manager.

D. This Agreement contains the entire Agreement of the parties.

E. Florida Law shall govern this Agreement and any litigation that may arise from this Agreement shall be filed and litigated in the state and federal courts of Miami- Dade County, Florida.

F. Upon Village Manager's death, the Village's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;

2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization and medical bills in accordance with Village's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with this Agreement and the Village's insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and accordingly, no court or administrative hearing officer construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and/or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.


No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

J. The rights and obligations herein granted are personal in nature and cannot be transferred by the Village Manager.


Mario Diaz, Village Manager


Virginia O'Halpin, Village Mayor

APPROVED AS TO FORM:


Edward A. Dion